IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.167 OF 2006
IN
NOTICE OF MOTION NO.65 OF 2004
IN
SUIT NO.16 OF 2004

Kamal Galani ..Plaintiff

Vs.

Subhi Construction P.Ltd. and Ors. ..Defendants

Mr.N.G.Thakkar i/b Kirit N.Damania and Co. for the plaintiff

Mr.Ruchir Tolat i/b Pankaj Das for defendant no.4 to 8

CORAM : S.U.KAMDAR, J
DATED : 24TH JANUARY, 2006

P.C.:

1. By consent of the parties, motion is placed on board forthwith and called out. Defendants waive service.

2. The present motion is filed for setting aside an exparte order dt.9.9.04. The only ground for setting aside an exparte order is the default on the part of the clerk of the Advocate. This defence has become very common and is found in

almost every matter. Thus, there is no much substance in the present application. However, the learned counsel for defendant no.4 to 8 states that in view of the fact that similar application of defendant no.1 to 3 is made absolute and an ex-parte order dt.9.9.04 as against them is set aside by D.K.Deshmukh, J by an order dt.12.1.06 the present application be also granted, if necessary, on payment of heavy cost.

3. In the light of the aforesaid, I grant motion in terms of prayer clause (a) and (b). The same will be on condition that defendant no.4 to 8 to pay cost quantified at Rs.25000 to the plaintiff on or before 31.1.06. Plaintiff will be at liberty to file any additional affidavit if they deem fit. The said affidavit to be filed on or before 4.2.06. Motion made absolute accordingly. However, an order dt.9.9.04 will continue as ad interim order for defendant no.4 to 8 till the disposal of the motion.